

Office of the Secretary, Interior

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§ 4.104 Preparation, organization, transmittal, and status of appeal file.

(a) *Preparation and transmittal of appeal file.* Following receipt of a notice of appeal, or advice that an appeal has been docketed, the contracting officer shall promptly, and in any event within 30 days, compile and transmit to the Board the appeal file which shall consist of copies of all documents pertinent to the appeal. Within the same time period the contracting officer shall also prepare and transmit a copy of the appeal file to the Department counsel and a copy to the appellant or appellant's counsel. (However, the obligations of this subparagraph are subject to the provisions of paragraph (e) of this section.)

(b) *Composition of appeal file.* The appeal file shall include the following:

(1) The findings of fact and decision from which the appeal is taken, and the letter or letters or other documents of claim in response to which the decision was issued;

(2) The contract, and pertinent plans, drawings, specifications, amendments, and change orders;

(3) All correspondence between the parties pertinent to the appeal; and

(4) Such additional information as may be considered pertinent and material.

(c) *Organization of appeal file.* Documents in the appeal file may be originals, legible facsimiles, or authenticated copies thereof, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file, and bound. Any single document consisting of three or more pages shall be numbered sequentially for convenient reference at the hearing and in the preparation of briefs.

(d) *Opportunity for appellant to supplement appeal file.* The appellant shall be afforded the opportunity of supplementing the appeal file with such documentation as may be deemed pertinent to the appeal. The appellant shall be obligated, however, to furnish to Department counsel a copy of any document by which the appeal file is supplemented.

(e) *Burdensome documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file if a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he shall notify the other party that the same or a copy is available for inspection at the offices of the Board or of the party filing the same.

§ 4.105 Dismissal for lack of jurisdiction.

Any motion challenging the jurisdiction of the Board shall be filed promptly. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board has authority to raise at any time and on its own motion the issue of its jurisdiction to conduct a proceeding and may afford the parties an opportunity to be heard thereon.

§ 4.106 Representation and appearances.

(a) *The Appellant.* An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

(b) *The Government.* Department or Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney.

§ 4.107 Pleadings.

(a) *Complaint.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and one copy of a complaint setting forth simple, concise, and direct statements of each

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claim, alleging the basis with appropriate reference to contract provisions for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. Letter size paper should be used for the complaint and for all other papers filed with the Board. Where the appeal arises out of a contract made with the Department of the Interior, a copy of the complaint shall be served by appellant upon the Department counsel if known, otherwise, upon the Solicitor, U.S. Department of the Interior, C Street, between 18th and 19th Streets, NW., Washington, DC 20240. Where the appeal arises out of a contract made with an agency other than the Department of the Interior, a copy of the complaint shall be served by appellant upon the General Counsel for that agency. All such service shall be made in accordance with § 4.117. Should the complaint not be received within 30 days, appellant's claim and appeal documents may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth a complaint and the Department counsel will be so notified.

(b) *Answer.* Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, the Department counsel shall prepare and file with the Board an original and one copy of an answer thereto, setting forth simple, concise, and direct statements of the Government's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims, as appropriate. One copy of the answer will be served by the Department counsel upon the appellant in accordance with § 4.117. Should the answer not be received within 30 days, the Board, may, in its discretion enter a general denial on behalf of the Government, and the appellant shall be so notified.

§ 4.108 Amendments of pleadings or record.

(a) The Board may, in its discretion, upon its own initiative or upon application by a party, order a party to make

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a more definite statement of the complaint or answer, or to reply to an answer.

(b) The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his pleading upon conditions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the appeal file, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such circumstances motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or said appeal file (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal: *Provided, however,* That the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

§ 4.109 Hearing—election.

Within 15 days after the Government's answer has been served upon the appellant, or within 20 days of the date upon which the Board enters a general denial on behalf of the Government, notification as to whether one or both of the parties desire an oral hearing on the appeal should be given to the Board. In the event either party requests an oral hearing, the Board will schedule the same as hereinafter provided. In the event both parties waive an oral hearing, the Board, unless it directs an oral hearing, will decide the appeal on the record before it, supplemented as it may permit or direct. A party failing to elect an oral hearing within the time limitations specified in this section may be deemed to have submitted its case on the record.

§ 4.110 Prehearing briefs.

Based on an examination of the appeal file, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs